

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JERI FARRELL</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 196,839 & 196,840
<b>U.S.D. #229</b>	)	
Respondent	)	
	)	
AND	)	
	)	
<b>KANSAS ASSOCIATION OF SCHOOL BOARDS</b>	)	
Insurance Carrier		

**ORDER**

Respondent appeals from an Award issued by Administrative Law Judge Robert H. Foerschler on November 7, 1997. The Appeals Board heard oral argument April 21, 1998.

**APPEARANCES**

Kip A. Kubin of Overland Park, Kansas, appeared for the claimant. Frederick J. Greenbaum of Kansas City, Kansas, appeared for the respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board has reviewed the record and adopted the stipulations listed in the Award.

**ISSUES**

The issues on appeal are as follows:

1. At the time of the two accidents in this case, December 2, 1992, and September 29, 1994, the Act provided that an employer was not liable for permanent partial disability benefits in cases where an otherwise compensable injury did not disable the employee for at least one week from earning full wages. K.S.A. 1992 Supp. 44-501(c). Does that same limitation apply if the employee did not miss five or more consecutive days but missed all or part of at least five days, sometimes for an appointment with a physician, and was paid sick leave pay for all time missed?
2. What is the nature and extent of claimant's disability? The ALJ awarded 5 percent disability for each accident. Respondent contends claimant has no permanent disability from either accident.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the records and considering the arguments, the Appeals Board finds the Award should be affirmed.

#### **Findings of Fact**

1. Claimant, a teacher, was injured December 2, 1992, when a basketball hit the left side of her face. She was supervising intermural activities in the gym at the time. The claim for this accident was assigned Docket No. 196,839.
2. Claimant was injured again on September 29, 1994, when a volleyball struck the left side of her face, again during an activity period. The claim for this accident was assigned Docket No. 196,840.
3. After each accident claimant missed, because of her injury, all or part of more than five days. Claimant was paid sick leave for the time missed and at least on some occasions, the record does not show how many, the time missed was for the purpose of attending a medical exam. Claimant did not miss five consecutive days following either accident.
4. From the accident, claimant experienced tingling and numbness on the left side of her face. She had other symptoms which included pain in her left eye and temple area as well as difficulty with her vision.

5. Dr. Bernard M. Abrams, one of the physicians who treated claimant's injuries, testified that claimant has, as a result of these two injuries, a total of 10 percent permanent partial impairment with 5 percent attributable to each injury. He gave the rating for pain and numbness in the distribution of the trigeminal nerve.

6. Dr. Robert T. Tenny also evaluated claimant's injuries. He concluded claimant has no permanent partial impairment from either injury.

### **Conclusions of Law**

1. K.S.A. 1992 Supp. 44-501(c) limited workers compensation awards to medical expenses only if the injury did not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed. The same statute applied to claimant's accident in 1994. Osborn v. Electric Corp. of Kansas City, 23 Kan. App. 2d 868, 936 P.2d 297, *rev. denied* 262 Kan. \_\_\_\_ (1997).

2. The Board concludes claimant was disabled for one week from earning full wages at the work at which she was employed. In so finding, the Board concludes that sick leave pay is not wages as contemplated in K.S.A. 44-501(c). Moreover, the sick leave pay is not "at the work at which the employee is employed." The Board also finds the disablement need not be consecutive days.

3. The Board finds, based on Dr. Abrams' testimony, claimant has, and is entitled to benefits based on, a 5 percent general body disability for each accident.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler, dated November 7, 1997, should be, and hereby is, affirmed.

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Jeri Farrell, and against the respondent, U.S.D. #229, and its insurance carrier, Kansas Association of School Boards, for an accidental injury sustained December 2, 1992, and again on September 29, 1994.

For the accident which occurred December 2, 1992, and based upon an average weekly wage of \$763.27, claimant is entitled to 415 weeks at the rate of \$25.44 per week, or \$10,557.60, for a 5% permanent partial general body disability.

As of May 15, 1998, there is due and owing claimant 284.29 weeks of permanent partial disability compensation at the rate of \$25.44 per week or \$7,232.34, which is

ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$3,325.26 is to be paid for 130.71 weeks at the rate of \$25.44 per week, until fully paid or further order of the Director.

For the accident which occurred September 29, 1994, the claimant is entitled to 20.75 weeks at \$319 per week or \$6,619.25 for a 5% permanent partial general body disability which is ordered paid in one lump sum less any amounts previously paid.

The Appeals Board otherwise affirms and adopts the remaining orders of the Administrative Law Judge not inconsistent herewith.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kip A. Kubin, Overland Park, KS  
Frederick J. Greenbaum, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director